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CITY OF RYE FINANCE COMMITTEE MEMORANDUM

Date: June 7, 2005
To: O. Paul Shew, City Manager
From: Jono Peters, Chair
Re: Proposed Real Estate Transfer Tax Legislation

The City Council requested that the Finance Committee review the concept of a City of Rye Real Estate Transfer Tax. This memorandum sets forth the Committee's research and conclusions. The Committee recognizes that it serves only as an advisory committee to the City Council.

Existing Legislation

New York State Tax Law Article 31 establishes the authority for a community to impose a real estate transfer tax. Special legislation amending New York State Tax Law Article 31 is required to authorize the City of Rye, New York to implement a real estate transfer tax. Among other provisions, such laws typically require that the revenues derived from such a tax be used for one or more specific purposes, and typically have a "sunset clause" wherein the law is repealed unless extended by legislation.

NYS Tax Law Articles 31-A through 31-E are special legislation provided to certain counties and towns authorizing a real estate transfer tax. NYS Town Law Sections 64-e and 64-f are referenced in NYS Tax Law Articles 31-D and 31-B respectively. A summary of the amount of the tax and use of tax proceeds as found in Articles 31-A through 31-E is as follows:

Article 31-A Erie County

The county of Erie is authorized to impose a tax on each conveyance of real property at the rate of two dollars and fifty cents for each five hundred dollars or fractional part thereof. An officer of the county shall pay to the Niagara Frontier transportation authority all revenue deposited under this section. Distributions shall be paid into a repair reserve fund established by the county pursuant to section six-d of the general municipal law for the purpose of repair of county roads and bridges within such county.

Article 31-B Town of Brookhaven

The Town of Brookhaven is authorized to impose a tax on each conveyance of real property or interest therein where the consideration exceeds five hundred dollars, at the rate of two percent of the consideration for such conveyance. The town must establish a community preservation fund pursuant to section sixty-four-f of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund.

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Town Law Section 64-f: The purposes of the fund shall be exclusively, (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, (d) to provide a management and stewardship program for such interests and rights consistent with subdivision nine of this section and in accordance with such plan designed to preserve community character; provided that not more than ten percent of the fund shall be utilized for the management and stewardship program, and (e) to make payments to school, fire, fire protection and ambulance districts in connection with lands owned by the state or any municipal corporation within the central pine barrens area as defined in subdivision ten of section 57-0107 of the environmental conservation law.

Preservation of community character shall involve one or more of the following: (a) establishment of parks, nature preserves or recreation areas; (b) preservation of open space, including agricultural lands; (c) preservation of lands of exceptional scenic value; (d) preservation of fresh and saltwater marshes or other wetlands; (e) preservation of aquifer recharge areas; (f) preservation of undeveloped beachlands or shoreline; (g) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species; (h) preservation of pine barrens consisting of such biota as pitch pine, and scrub oak; (i) preservation of unique or threatened ecological areas; (j) preservation of rivers and river areas in a natural, free-flowing condition; (k) preservation of forested land; (l) preservation of public access to lands for public use including stream rights and waterways; (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and (n) undertaking any of the aforementioned in furtherance of the establishment of a greenbelt.

Article 31-C Broome County

Broome County is authorized to impose a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of fifty cents for each five hundred dollars or fractional part thereof. All revenue derived from the imposition of such tax shall be deposited into the general fund of the county of Broome and shall only be appropriated by the county legislature of the county of Broome to fund veterans' services programs within such county.

Article 31-D Towns in the Peconic Bay Region

Any town in the Peconic Bay region is authorized to impose a tax on each conveyance of real property or interest therein where the consideration exceeds five hundred dollars, at the rate of two percent of the consideration for such conveyance. The town must establish a community preservation fund pursuant to section sixty-four-e of the town law. Revenues from such tax shall be deposited in such fund and may be used solely for the purposes of such fund.

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Town Law Section 64-e: The purposes of the fund shall be exclusively, (a) to implement a plan for the preservation of community character as required by this section, (b) to acquire interests or rights in real property for the preservation of community character within the town including villages therein in accordance with such plan and in cooperation with willing sellers, (c) to establish a bank pursuant to a transfer of development rights program consistent with section two hundred sixty-one-a of this chapter, (d) to provide a management and stewardship program for such interests and rights consistent with subdivision nine of this section and in accordance with such plan designed to preserve community character; provided that not more than ten percent of the fund shall be utilized for the management and stewardship program, and (e) to make payments to school, fire, fire protection and ambulance districts in connection with lands owned by the state or any municipal corporation within the central pine barrens area as defined in subdivision ten of section 57-0107 of the environmental conservation law.

Preservation of community character shall involve one or more of the following: (a) establishment of parks, nature preserves, or recreation areas; (b) preservation of open space, including agricultural lands; (c) preservation of lands of exceptional scenic value; (d) preservation of fresh and saltwater marshes or other wetlands; (e) preservation of aquifer recharge areas; (f) preservation of undeveloped beachlands or shoreline; (g) establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species; (h) preservation of pine barrens consisting of such biota as pitch pine, and scrub oak; (i) preservation of unique or threatened ecological areas; (j) preservation of rivers and river areas in a natural, free-flowing condition; (k) preservation of forested land; (l) preservation of public access to lands for public use including stream rights and waterways; (m) preservation of historic places and properties listed on the New York state register of historic places and/or protected under a municipal historic preservation ordinance or law; and (n) undertaking any of the aforementioned in furtherance of the establishment of a greenbelt.

Article 31-E Nassau County

Nassau County is authorized to impose a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of five dollars for each five hundred dollars or fractional part thereof. All revenue derived from the imposition of such tax shall be deposited into the general fund of the county of Nassau and shall only be appropriated by the county legislature of the county of Nassau for the payment of debt service.

Estimated Annual Revenues

The Committee noted that there is a broad range of rates in the existing legislation for a real estate transfer tax, from a low of one-tenth of one percent (0.1%) to a high of two percent (2%). According to the City Assessor's 2004 Annual Report to the City Manager, residential sales recorded in the City of Rye for fiscal years 2001, 2002, and 2003 were \$229 million, \$235 million, and \$259 million respectively. Accordingly, each one (1%) percent of real estate transfer tax would have raised approximately \$2.3 million, \$2.4 million, and \$2.6 million in each of the three years noted. The Committee expressed concern over the possibility that the tax rate could

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add substantial cost to the sale of a home. Per the Assessor's report noted earlier, the average sale price of a home in the City of Rye in 2004 was \$1.3 million; meaning that a 1% real estate transfer tax would add \$13,000 to the seller's costs.

Dedicated Use of Revenues

The Committee noted that existing legislation specifies dedicated uses for the revenues: repair of roads and bridges, environmental preservation, veterans' services, and debt service. The Committee determined that if a real estate transfer tax were to be implemented, the revenues should be dedicated to objects or purposes having a probable period of usefulness of not less than 15 years, as determined by Section 11 of the New York State Local Finance Law. In essence, this would limit the use of the funds to long-term capital assets and improvements. Referencing Section 11 of the Local Finance Law would minimize future interpretations or questions concerning the intended use of the dedicated revenues.

Sunset Clause

The Committee agreed that since all other such existing legislation had a sunset clause (a date that the legislation terminates unless renewed), legislation for the City of Rye should also have a sunset clause. The sunset date should be set to a term that emulates similar existing legislation.

Committee Conclusions

The Committee reviewed and discussed all of the above at great lengths in several Finance Committee meetings. The revenues to be generated could be quite substantial and if applied to major long-term capital items would provide significant benefits to the implementation of the City's capital improvement programs. However, there are several issues with a real estate transfer tax that the Committee did not find favorable.

More specifically, the Committee could not support the tax because the tax 1) is a "stealth tax"; 2) effectively and inappropriately reduces the public's participation and consent by removing at least a portion of the capital asset funding process from the annual budget process; 3) creates the possibility that the tax proceeds will inappropriately be used to supplant, rather than enhance, annual funding for capital assets; 4) is an additional burden for those property owners who upgrade their living arrangements by selling one home in Rye to purchase another of greater value in Rye; 5) the communities in New York State that currently have a tax are communities in financial difficulty, so it is unlikely that the City of Rye, with a Aaa rating, would be approved, and 6) several communities have already applied for such a tax this year, and all have failed passage due to the State's reluctance to allow such a tax.

The Finance Committee thanks the City Council for being given the opportunity to review and provide an opinion on this issue.

Respectfully submitted,
The City of Rye Finance Committee